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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN BUCKLEY,

Plaintiff,

vs.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

Case No.: 2:20-cv-01724-VCF

**MOTION FOR EXTENSION OF TIME TO FILE
CERTIFIED ADMINISTRATIVE RECORD
AND ANSWER; DECLARATIONS OF JEBBY
RASPUTNIS AND CHRISTIANNE VOEGELE;
[PROPOSED] ORDER**

(FIRST REQUEST)

1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
2 his undersigned attorneys, hereby moves for a 60-day extension of time to file an Answer to Plaintiff’s
3 Complaint and the electronic Certified Administrative Record (eCAR), changing the date on which the
4 Answer is due from the current due date of December 14, 2020, to the new due date of February 12,
5 2021. Counsel for Defendant contacted Plaintiff via phone on December 8, 2020 and email on December
6 9, 2020. Plaintiff strongly objects to this request.

8 Defendant makes this request in good faith and for good cause, because the eCAR, which must
9 be filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
10 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
11 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
12 for producing the eCAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). Prior to the
13 COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all hearing recordings,
14 which are part of the administrative record, were downloaded onto compact discs and encrypted. OAO
15 securely routed the encrypted discs to a private contractor through a daily pickup and delivery service at
16 the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor would transcribe the
17 hearing recording and send the paper copy of the hearing transcript back to OAO. OAO personnel would
18 then scan the hearing transcript into the electronic record or place the hearing transcript in the paper case
19 file. Thereafter, OAO personnel would assemble the administrative record in a prescribed order. After
20 the advent of COVID-19, the Agency has taken a number of concrete steps to transition its years-old in
21 person CAR preparation process to a fully virtual one.

24 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the OAO,
25 and Christianne Voegelé, Chief of the Court Case Preparation and Review Branch 1, and Acting Chief of
26 the Court Case Preparation and Review Branch 3, of OAO, OAO has been actively pursuing mitigation

1 efforts to allow the remote preparation of administrative records to ensure a continuity of operations. For
2 cases in which the private contractors were already in possession of hearing recordings for transcription,
3 with the assistance of the Office of Acquisitions and Grants (OAG), OAO received approval to receive
4 these transcripts from the private contractors via secured email, e.g., using password protection and
5 redacted Social Security Numbers. In April 2020, OAO began receiving such hearing transcripts from
6 private contractors via secured email.
7

8 For cases in which OAO had not yet submitted recordings to the private contractors before March
9 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
10 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
11 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
12 that arose, particularly with large files.
13

14 As indicated by the Rasputnis declaration, the Commissioner must navigate and overcome five
15 simultaneous challenges as it transitions the preparation of eCARs from an in-person process to a
16 completely virtual one:

- 17 1. Obtaining the appropriate technology, subject to Federal purchasing rules;
- 18 2. Retraining staff on the new procedures and new technology, which differ quite dramatically
19 from the old ones;
- 20 3. Adhering to the Federal government protections for personally identifiable information (PII);
- 21 4. Working with outside vendors for transcription services, including obtaining a new vendor
22 subject to Federal contracting rules; and
- 23 5. Completing security clearance processes for any new employees *and* any employees of new
24 vendors before allowing access to PII and other sensitive information of the vendors. While the agency
25 has worked hard to overcome challenges related to this transition, the agency estimates that it is
26

1 producing CARs at approximately one-third of the level of production pre-COVID, with the hopes of
 2 increasing that rate over the next several weeks. In March, April, and May 2020, during the initial stages
 3 of the pandemic, Defendant requested a 90-day extension when the CAR was unavailable. Now that
 4 OAO has regained some capability of producing transcripts, the Commissioner has reduced the length of
 5 extension requested to 60 days. In this case, given the volume of pending cases, Defendant requests a 60-
 6 day extension in which to respond to the Complaint.
 7

8 Accordingly, the Commissioner requests that this Court grant his motion for a 60-day extension in
 9 which to file an Answer and lodge the eCAR, changing the date on which the Answer is due from the
 10 current due date of December 14, 2020, to the new due date of February 12, 2021. Counsel for
 11 Defendant further states that the Office of General Counsel (OGC) is monitoring receipt of transcripts on
 12 a daily basis and is committed to filing Answers promptly upon receipt and review of the administrative
 13 records. Counsel for Defendant apologizes to the Court and Counsel for Plaintiff for any inconveniences
 14 caused by this delay.
 15

16 Dated: December 10, 2020

Respectfully submitted,

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 18 NICHOLAS A. TRUTANICH
 United States Attorney

19 /s/ Chantal R. Jenkins
 20 Chantal R. Jenkins
 Special Assistant United States Attorney

21
 22
 23 IT IS SO ORDERED

24 
 25 UNITED STATES MAGISTRATE JUDGE

26 DATED: 12-10-2020

CERTIFICATE OF SERVICE

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 160 Spear Street, Suite 800, San Francisco, California 94105. I am not a party to the above-entitled action. On the date set forth below, I caused service of **MOTION FOR EXTENSION OF TIME TO FILE CERTIFIED ADMINISTRATIVE RECORD AND ANSWER; DECLARATIONS OF JEBBY RASPUTNIS AND CHRISTIANNE VOEGELE; [PROPOSED] ORDER;** on the following parties through regular U.S. mail:

John Buckley
9501 Canyon Hollow Avenue
Las Vegas, NV 89149

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 10, 2020

/s/ Chantal R. Jenkins
CHANTAL R. JENKINS
Special Assistant United States Attorney